



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

March 7, 2003

Ms. Elaine S. Hengen  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR2003-1515

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177561.

The City of El Paso Police Department (the "department") received a request for (1) the "internal affairs history for Eulalio Balderrama #757, (2) the "[a]dministrative complaint against [Officer Balderrama] thru city personnel dept.," (3) the "[a]dministrative complaint against [Officer Balderrama] thru IAD by [a named officer]," and (4) the "[a]dministrative complaint against [Officer Balderrama] thru IAD by [a named officer]." You state that you have released the records responsive to category one of the instant request. You claim that the information responsive to category two, which you have marked exhibit F, and the information responsive to categories three and four, which you have marked exhibit G, is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The common-law right of privacy is incorporated into the Public Information Act by section 552.101. For information to be protected by common-law privacy it must meet the criteria set out in *Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

The submitted information contains two investigations into allegations of sexual harassment. The first investigation was initiated on November 14, 2001 and involved, in part, an allegation of sexual harassment by the requestor. There is no adequate summary of the first investigation into the requestor's allegation of sexual harassment that was initiated on November 14, 2001. Furthermore, since common-law privacy exists to protect the privacy of individuals, the requestor here has a special right of access to his own identifying information. See Gov't Code § 552.023 (person or person's authorized representative has special right of access beyond right of general public to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect that person's privacy interests). Therefore, you may not withhold the requested information in exhibit F that pertains to the investigation into the requestor's allegations of sexual harassment that was initiated on November 14, 2001, pursuant to section 552.101.

The second investigation, initiated November 29, 2001, involved separate allegations of sexual harassment and contains an adequate summary of the investigation into the alleged sexual harassment. Therefore, the department must release the summary pursuant to *Ellen*, 840 S.W.2d at 525. However, the identities of the victims and witnesses to the alleged sexual harassment are protected by the common law privacy doctrine and must generally be withheld from the summary. *Id.* Contrarily, the public interest in the statement and the identity of the alleged harasser outweighs any privacy interest the alleged harasser may have in that information; therefore, the department may not withhold this information under

section 552.101. The public has no legitimate interest in the details of the victims' and witnesses' personal statements, and they may not be disclosed. *Id.* Thus, you must release the summary of the investigation into allegations of sexual harassment and the statement of the alleged harasser contained in exhibit G with the exception of most of the victims' and witnesses' identities, which we have marked. However, the requestor has a special right of access to his own name pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023 (person has special right of access beyond right of general public to information held by government body relating to person and that is protected from public disclosure by laws intended to protect that person's privacy interests). You must withhold the remaining information pertaining to the first investigation into allegations of sexual harassment that we have marked in exhibits F and G pursuant to section 552.101.

Section 552.117(2) excepts from release the following categories of information pertaining to a peace officer, as defined by article 2.12 of the Code of Criminal Procedure: the officer's current and former home address and home telephone number, social security number, and information revealing whether the officer has family members. Open Records Decision No. 622 (1994). The submitted information includes the family member information of peace officers. We have marked this information, which must be withheld under section 552.117(2). We note that the requestor has a special right of access to his own family member information pursuant section 552.023 of the Government Code. *See* Gov't Code § 552.023.

We further note that the submitted information contains an e-mail address that would ordinarily be excepted from release under section 552.137 of the Government Code. *See* Gov't Code § 552.137 (making e-mail addresses of members of the public confidential). Since section 552.137 exists to protect privacy interests, however, in this case, the department must release the requestor's e-mail address pursuant to his special right of access. *See* Gov't Code § 552.023.

In summary, you must the information that we have marked pursuant to section 552.101 in conjunction with common-law privacy and *Ellen*. You must withhold the family member information of peace officers, which we have marked, pursuant to section 552.117(2) with the exception of the requestor's family member information, which you must release pursuant to section 552.023. You must release the remaining responsive information.<sup>2</sup> As sections 552.101 and 552.117 are dispositive, we need not consider your arguments under sections 552.108 and 552.130.

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<sup>2</sup>We note that some of the information that you must release contains or consists of confidential information that is not subject to release to the general public. *See* Gov't Code § 552.352. However, the requestor in this instance has a special right of access to some of the information. Gov't Code § 552.023. Because some of the information is confidential with respect to the general public, if the department receives a future request for this information from an individual other than the requestor or his authorized representative, the department should again seek our decision.

Finally, the department requests that this office grant a previous determination allowing it to withhold telephone numbers and pager numbers assigned to police officers pursuant to section 552.108 and to withhold Texas driver's license, Texas license plate, and Texas vehicle identification numbers pursuant to section 552.130. We decline to issue such a ruling.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

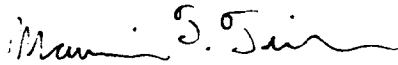
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Maverick F. Fisher".

Maverick F. Fisher  
Assistant Attorney General  
Open Records Division

MFF/seg

Ref: ID# 177561

Enc: Submitted documents

c: Mr. Woody Bare  
13132 Village Gate  
El Paso, Texas 79936  
(w/o enclosures)